

DEPARTMENT OF INSURANCE**Legal Division, Rate Enforcement Bureau**

45 Fremont Street, 21st Floor
San Francisco, CA 94105



**NOTICE OF PROPOSED EMERGENCY RE-ADOPTION
AND FINDING OF EMERGENCY
PURSUANT TO GOVERNMENT CODE SECTION 11346.1
AND CALIFORNIA INSURANCE CODE SECTION 12921.7**

ER-2007-00003

March 4, 2008

CALIFORNIA LOW COST AUTOMOBILE INSURANCE PROGRAM

**Rates for Liability, Uninsured Motorists and Medical Payment Coverages for
Amador, Butte, Calaveras, El Dorado, Humboldt, Kings, Lake, Madera,
Marin, Mendocino, Napa, Placer, San Benito, Santa Cruz, Shasta,
Solano, Sutter, Tuolumne, Yolo, and Yuba Counties**

California Insurance Commissioner Steve Poizner ("Commissioner") hereby provides notice, pursuant to California Insurance Code section 12921.7 and Government Code section 11346.1, that he will propose to the Office of Administrative Law ("OAL") the re-adoption of emergency amendments to the California Automobile Insurance Low Cost Program Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, section 2498.6 of the California Code of Regulations, on an emergency basis pursuant to California Government Code sections 11346.1(b) and (h).

The first set of emergency regulations (Title 10, Cal. Code Regs., § 2498.6) which implements California Insurance Code sections 11629.7 through 11629.85 was approved by the OAL on September 17, 2007. This first set of emergency regulations approved by the OAL is scheduled to expire on April 1, 2008. Because the California Department of Insurance ("Department") has made substantial progress and has proceeded with diligence to develop a certification of the permanent regulations, the Department hereby requests re-adoption of these regulations as set forth below.

This Notice contains a description of the problem and the necessity for the regulation, an explanation of the justification for the re-adoption of the emergency regulations and a copy of the text of the emergency regulations in effect.

This Notice is provided to every person, group, and association who has previously filed a request for notice of regulatory action with the Commissioner. Copies of the Notice are available at the Department of Insurance, 45 Fremont Street, 21st Floor, San Francisco, California, 94105 and on the Department's web site at www.insurance.ca.gov.

The proposed regulation will be submitted to the OAL together with the rulemaking file not less than five (5) working days after the mailing of this Notice, as required by California Insurance Code section 12921.7 and Government Code section 11346.1. Questions regarding this Notice should be directed to:

California Department of Insurance
Legal Division
Attn: Bryant Henley, Senior Staff Counsel
45 Fremont Street, 21st Floor
San Francisco, California 94105
(415) 538-4111

The Commissioner hereby finds that an emergency exists, and that the following amendment of the California Automobile Insurance Low Cost Program Plan of Operations, referenced in Title 10, Chapter 5, Subchapter 3, section 2498.6 of the California Code of Regulations, is necessary for the immediate preservation of the public peace, health and safety, or general welfare.

DESCRIPTION OF PROBLEM AND NECESSITY FOR REGULATION

Legislation involving the California Low Cost Automobile Insurance program, Stats. 2005, chapter 435 (SB 20, Escutia), was approved by the Governor on September 30, 2005. The legislation extended the program to Alameda, Fresno, Orange, Riverside, San Bernardino and San Diego counties, commencing on April 1, 2006. The bill further authorized expansion of the program to all counties in California at the discretion of the Commissioner, subject to specified procedures. Following such procedures, the Commissioner has expanded the program to Contra Costa, Imperial, Kern, Sacramento, San Joaquin, San Mateo, Santa Clara, and Stanislaus counties, effective June 1, 2006, and to Merced, Monterey, Santa Barbara, Sonoma, Tulare, and Ventura counties, effective March 30, 2007. Similarly, in an emergency rulemaking action approved by OAL on November 15, 2007, the Commissioner expanded the program to Alpine, Colusa, Del Norte, Glenn, Inyo, Lassen, Mariposa, Modoc, Mono, Nevada, Plumas, San Luis Obispo, Sierra, Siskiyou, Tehama and Trinity counties, effective December 10, 2007.

The legislation does not specify a rate, but authorizes the Commissioner to adopt regulations establishing a rate, in consultation with the California Automobile Assigned Risk Plan (“CAARP”), in order to implement the expansion of the program to these counties, as emergency regulations. Previous legislation mandated the availability of optional coverages of uninsured motorists and medical payments to policyholders at additional premium.

In exercising his discretion to further expand the program, the legislation specifies that the Commissioner make an initial determination of need, hold a public meeting in each county to discuss the need and desirability for such a program, and make a final determination of need within 30 days after the public meeting. The legislation provides that, in making the determination of need for each county, the Commissioner consider the number or percentage of uninsured motorists within the county, the number or percentage of low income residents within the county, and the availability of affordable automobile insurance in the voluntary market.

Accordingly, on June 13, 2007, the Commissioner made an initial determination of need to expand the program to Santa Cruz, Solano, Marin, Madera, Placer, Napa, Yolo, Mendocino, Kings, and Lake Counties. On July 13, 2007, the Commissioner announced his initial determination of need for the further expansion of the program to Amador, Butte, El Dorado, Calaveras, Humboldt, San Benito, Shasta, Sutter, Tuolumne, and Yuba counties, totaling 20 additional counties.

Subsequently, the Commissioner held public forums on June 15, 2006 in Santa Cruz county (city of Aptos), on June 25, 2007 in Napa county, on June 26, 2007 in Kings and Yolo counties (cities of Hanford and Woodland), on June 27, 2007 in Lake and Madera counties (cities of Lakeport and Central Madera), on June 28, 2007 in Marin county (city of San Rafael), on July 5, 2007 in Solano county (city of Fairfield), on July 6, 2007 in Mendocino county (city of Ukiah), on July 25, 2007 in Calaveras county (city of San Andreas), on August 1, 2007 in Shasta county (city of Redding), on August 2, 2007 in Yuba county (city of Marysville), on August 3, 2007 in El Dorado county (city of Placerville), on August 7, 2007 in Tuolumne and San Benito counties (cities of Sonora and Hollister), on August 9, 2007 in Amador and Sutter counties (cities of Jackson and Yuba City), on August 10, 2007 in Humboldt county (city of Eureka), on August 14, 2007 in Butte county (city of Chico), and on August 15, 2007 in Placer county (city of Auburn), to discuss the need and desirability of the program.

Based upon a consideration of the number or percentage of uninsured motorists within each county, the number or percentage of low income population in each county, the availability of affordable insurance options in the voluntary market, and affirmation of the need and desirability of the program expressed by consumers at the public meetings in each county, the commissioner made a final determination that a need exists for the program in each of these counties.

The commissioner announced his final determination of need for the program in Solano, Marin, Santa Cruz, Madera, Napa, Yolo, Mendocino, Kings and Lake counties on July 10, 2007, and for Amador, Butte, El Dorado, Calaveras, Humboldt, Placer, San Benito, Shasta, Sutter, Tuolumne and Yuba counties on August 16, 2007, as required by the legislation.

The low cost automobile insurance program was established within the California Automobile Assigned Risk Plan and follows CAARP procedures where appropriate and not inconsistent with the low cost automobile insurance statutes. Under the assigned risk plan, applicants for insurance are randomly assigned to a licensed automobile insurer and that insurer issues and services the policy in accordance with the Plan. Customarily, CAARP and low cost automobile insurance program rates are uniform so that the consumer pays the same rate irrespective of what company the consumer is assigned.

Because the low cost auto insurance policy is at lower liability limits than basic limits policies in the voluntary market, rates must be independently calculated. Thus, establishing uniform rates for the liability policy and additional coverages requires significant and time-consuming actuarial efforts.

To expedite the program's operation in these twenty counties, on July 19, 2007, CAARP's Advisory Committee proposed to the Commissioner rates for the liability policy and additional

coverages. Subsequently, the Department reviewed CAARP's methodology and determined that the rates proposed by CAARP were adequate and consistent with statutory rate-setting standards. Those rates are the ones proposed for adoption in this emergency regulation.

To establish uniform rates for the liability policy and optional coverages for the additional twenty counties, the Plan of Operations must be amended.

JUSTIFICATION FOR RE-ADOPTION AS EMERGENCY REGULATIONS

Following CAARP and the Low Cost Automobile insurance program's statutory rate-setting procedures without the re-adoption of these emergency regulations would deprive California drivers of an affordable insurance option to low income eligible drivers in the twenty expansion counties.

Moreover, California Insurance Code section 11629.79 mandates that the Office of Administrative Law consider the adoption of the regulations to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

Accordingly, as is set forth above, the Department submitted the first set of emergency regulations concerning this matter on September 17, 2007. The OAL approved the emergency regulatory action, effective October 10, 2007. By operation of law, this first emergency regulatory action will expire on April 1, 2008. Despite the Department's best efforts, the Department cannot properly ensure the preservation of Low Cost Automobile insurance for Californians in the twenty expansion counties referenced above without a contemporaneous re-adoption of this emergency regulatory action.

The time which has elapsed since the effective date of the most recent emergency regulations has not been sufficient for the Department to complete the permanent rulemaking process. Furthermore, internal changes in organizational structure within the Department resulted in additional complications which strained the Department's ability to successfully complete the permanent rulemaking process prior to the April 1, 2008 expiration of the emergency regulatory action currently in effect. Additionally, procedural time constraints limited the Department's ability to schedule the permanent rulemaking hearing in less than 60 days from the date of the Notice of Proposed Action. (See Ins. Code § 11620 [requiring a minimum of 60 days' notice to the public prior to a public hearing concerning amendments to the Assigned Risk Plans; a category which includes the Low Cost Auto Program].) Notwithstanding these limitations, on February 1, 2008 and at the request of the Department, the OAL provided timely notice to the public regarding the permanent rulemaking for this matter (see Department File No. REG-2007-00056; OAL Z-File No. Z08-0118-01.) A public hearing on the permanent rulemaking is scheduled for April 9, 2008 and the Department intends to complete the rulemaking process expeditiously, while remaining mindful of the equally-important need to ensure open and careful consideration of public input.

EXPLICIT STATUTORY AUTHORITY TO ADOPT EMERGENCY REGULATIONS

California Insurance Code section 11629.79 mandates that the Office of Administrative Law consider the adoption of regulations to implement the expansion of the program to these counties to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

OTHER AUTHORITY UNDER WHICH THE REGULATION IS PROPOSED

The Insurance Commissioner proposes the adoption of this rulemaking action pursuant to the authority vested in him by California Insurance Code sections 11620, 11624, 11629.7, 11629.72, and 11629.79. The purpose of this rulemaking action is to implement, interpret, and make specific the provisions of Stats. 2005, chapter 435, operative January 1, 2006.

INFORMATIVE DIGEST / POLICY STATEMENT OVERVIEW

California Insurance Code sections 11629.7 through 11629.85 establish, within the California Automobile Assigned Risk Plan, codified in section 11620 of the Insurance Code, a low-cost automobile insurance program for all counties in California.

Because the program is established and administered through CAARP, CAARP procedures are applied to the low cost automobile insurance program where appropriate and not inconsistent with the low cost automobile insurance statutes.

Existing law, Insurance Code section 11629.7, requires the Commissioner, after a public hearing, to approve or issue a reasonable plan for the equitable apportionment, among insurers, of those persons eligible to purchase a low-cost automobile insurance policy. The plan, approved by the Commissioner, is referenced in Title 10, section 2498.6 of the California Code of Regulations. This plan contains rules, rates, and procedures for adjusting rates.

Stats. 2005, chapter 435 (SB 20, Escutia), authorizes expansion of the low cost automobile insurance program to all counties in California at the discretion of the commissioner, subject to specified procedures. In accordance with such specified procedures, the commissioner has determined a need for the program in Santa Cruz, Solano, Marin, Madera, Placer, Napa, Yolo, Mendocino, Kings, Lake, Amador, Butte, El Dorado, Calaveras, Humboldt, San Benito, Shasta, Sutter, Tuolumne, and Yuba counties. The legislation does not specify a rate, but authorizes the Commissioner to adopt regulations establishing a rate to implement the expansion of the program to these counties, in consultation with CAARP, as emergency regulations.

The specific objective of these emergency regulations is to implement, interpret and make specific the provisions of Stats. 2005, chapter 435 by establishing uniform rates for the liability policy and optional coverages, consistent with statutory rate-setting standards.

COMPARABLE FEDERAL LAW

There are no comparable existing federal regulations or statutes.

LOCAL MANDATE DETERMINATION

The Insurance Commissioner has initially determined that the proposal will not result in any new program mandates on local agencies or school districts.

COST OR SAVINGS TO STATE OR LOCAL AGENCIES / SCHOOL DISTRICTS / FEDERAL FUNDING

The Insurance Commissioner has initially determined that the proposal will not result in any cost or significant savings to any state agency or to any local agency or school district for which Part 7 (commencing with section 17500) of Division 4 of the Government Code would require reimbursement, or in other nondiscretionary costs or savings to local agencies. Nor will the proposal affect federal funding to the state.

TECHNICAL STUDIES OR REPORTS RELIED UPON

The Commissioner hereby provides notice that he intends to rely upon the following documents in proposing this rulemaking action:

- Explanatory Memorandum Re: Expansion of Low Cost Automobile Insurance Program (AIPSO Filing No. LC-07-05).
- Explanatory Memorandum Re: Expansion of Low Cost Automobile Insurance Program (AIPSO Filing No. LC-07-06).

The documents listed above are part of the file for this rulemaking action. Any member of the public may view these documents by contacting the contact person listed above and arranging for an appointment to view the rulemaking file.

WRITTEN PUBLIC COMMENTS AND RESPONSES

The Department has not received any written public comments during the statutory five-day notice period prior to submission of the rulemaking file to the Office of Administrative Law.

TEXT OF THE PROPOSED REGULATIONS TO BE RE-ADOPTED

The text of the proposed rulemaking is attached. These are the same regulations that went into effect on October 1, 2007.

Dated: March 4, 2008.

STEVE POIZNER
Insurance Commissioner

By: /s/
Bryant Henley
Senior Staff Counsel